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DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: May 9, 2008

Case Number: TSO-0626

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxxxxxxx (hereinafter referred to as "the individual") to hold an access authorization 1/ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be granted.

I. Background

The individual is an applicant for a DOE access authorization. During a background investigation of the individual, the Local Security Office (LSO) learned that the individual had been arrested for simple assault, had attempted suicide, and had received counseling. These revelations prompted the LSO to conduct a personnel security interview (PSI) with the individual in April 2007. During the PSI, the individual revealed that she had been sexually assaulted on two separate occasions, and that she had been diagnosed with Mood Disorder, Borderline Personality Disorder, Bi-Polar Depression, Manic Depression and Anxiety by various military medical professionals during 2004 and 2005. These revelations prompted the LSO to refer the individual to a DOE psychologist for a forensic psychological examination. The DOE psychologist examined the individual in November 2007, and memorialized her findings in a report (Psychological Report or Exhibit (Ex.) 5). In the Psychological Report, the DOE psychologist stated that she did not believe that the individual suffers from a diagnosable mental illness. Ex. 5 at 13. However, she opined that the individual suffers from a mental condition in that she continues to deal with the psychological trauma associated with two sexual assaults, and has developed migraine headaches and episodes of dizziness which may be related to the trauma. *Id.* The DOE psychologist further opined that the trauma of past sexual assaults, their continuing effect upon the individual and the individual's past self-destructive response to the trauma may cause a significant defect in judgment and reliability. *Id.* She

1/ Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

recommended that the individual seek counseling to address the assaults and to develop coping skills to deal with stress.

In May 2008, the LSO sent a letter (Notification Letter) advising the individual that it possesses reliable information that created a substantial doubt regarding her eligibility to hold an access authorization. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of one potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsection (h) (hereinafter referred to as Criterion H).
2/

Upon receipt of the Notification Letter, the individual filed a request for a hearing. The LSO transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. At the hearing that I convened, the DOE Counsel called one witness, the DOE psychologist. The individual called three witnesses, including two former supervisors and a current manager. She also testified on her own behalf. The DOE and the individual submitted a number of written exhibits prior to and during the hearing.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denial"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting her access authorization "will not endanger the common defense and security and will be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

2/ Criterion H relates to information that a person has "[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h).

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization in favor of the national security. *Id.*

III. The Notification Letter and the Security Concern at Issue

As stated above, the LSO cites one criterion as the basis for denying the individual's security clearance, Criterion H. To support Criterion H, the LSO relies on the DOE psychologist's opinion that the trauma of past sexual assaults and their continuing effects upon the individual may cause a significant defect in the individual's judgment and reliability. The LSO also relies on other information in its possession regarding the individual's mental health: (1) during 2004 and 2005, various medical professionals diagnosed the individual with Anxiety, Manic Depression, Bi-Polar Depression, Mood Disorder and Borderline Personality Disorder, and (2) after the individual was assaulted in January 2004, she intentionally cut her arms on several occasions between January and July 2004. She subsequently attended counseling.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H. The security concern associated with Criterion H is that a mental condition can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House.

IV. Findings of Fact

The relevant facts in this case are uncontested. The individual entered the military in January 2001. In January 2004, while in the military, the individual was sexually assaulted by another military member. ^{3/} As a result of this incident, the individual became depressed and began self-medicating by drinking alcohol. The individual also cut her arms. ^{4/} She sought counseling on a weekly basis from a military doctor and was diagnosed with anxiety and manic depression. The military doctor prescribed Depakote which helped the individual with her depression, but resulted in tremors.

In July 2004, while still in the military, the individual had a physical and verbal altercation with her boyfriend during which both had been drinking alcohol. Ex. 5 at 4. After becoming distraught about this incident, the individual cut her arms again. She was subsequently arrested for simple assault and a possible suicide attempt. As a result of this arrest, the military required

^{3/} The individual also reported that she was sexually assaulted on one occasion while in high school.

^{4/} Prior to the assault, the individual drank alcohol only occasionally, about once a month with friends.

the individual to seek counseling. *Id.* As a consequence of her counseling, the individual was medically separated from the military for depression and anxiety in October 2005.

During a Personnel Security Interview (PSI) conducted on April 25, 2007, the individual admitted to cutting her arms several times during the first half of 2004. The individual further admitted to having been previously diagnosed with a Mood Disorder and Borderline Personality Disorder. She indicated that she was prescribed several medications for her depression and anxiety, one of which caused her to suffer tremors.

V. Analysis

I have thoroughly considered the record in this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c). ^{5/} After due deliberation, I have determined that the individual's access authorization should be granted. I find that granting the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Individual's Testimony

At the hearing, the individual testified that she was sexually assaulted on two occasions, once in high school and once in 2004, the latter time while serving in the military. Hearing Transcript (Tr.) at 39. She stated that after the first assault in high school, she began cutting her arms as a means to deal with her stress. She cut her arms again after the second assault in 2004. However, she stated that in 2004, she sought counseling to deal with the stress and anxiety associated with the assaults. *Id.* at 40. According to the individual, she attended counseling on a weekly basis for about seven months. *Id.* The individual stated that through her counseling, she learned about various mechanisms for dealing with her stress, such as calling her mother or a friend. *Id.* at 42. She further convincingly testified that since her counseling, she has become a stronger person and has learned how to deal with stress better. *Id.* at 43. The individual testified that she has taken classes to learn how to speak assertively in front of people. *Id.* She also testified that although her counseling ended in 2005, psychological counseling is still available to her through the military. *Id.* at 46. The individual reiterated that since early 2004, she has not tried to harm herself nor has she felt that she is in need of additional counseling. *Id.* at 47. Although she acknowledged that stressful memories of the past still emerge, she testified that she is able to deal with these issues by talking to her mother and her close friends or by watching a movie or going out to take her mind off these memories. *Id.* The individual further testified that at one point during her counseling sessions, she was prescribed Depakote to address her depression.

^{5/} Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

However, she stated that she stopped taking this medication in 2005 when she left the military. According to the individual, she tried different medications but they all made her sick or produced some other negative side affect. *Id.* at 50. Once she stopped taking medication, the individual stated that she felt better. *Id.* She also testified that she has suffered from migraines and episodes of dizziness, but that her doctor has attributed them to low blood pressure and low blood sugar. *Id.* at 51. She offered documentary evidence at the hearing to corroborate these findings. *See* Individual's Exhibit A.

At the hearing, the individual testified that she is feeling good now, succeeding at her job and "dealing with stress a lot better." *Id.* at 52. When asked how she had dealt with recent stressful issues or incidents in her life, the individual explained that her job is stressful, but that she balances that stress by working in her yard and taking care of other home maintenance issues. *Id.* at 53. The individual also explained that she has not had any thoughts of cutting herself or doing any other kind of self-inflicted harm. *Id.* She testified that her scars are a vivid reminder of her inappropriate and harmful behavior. According to the individual, that reminder is a significant deterrent for her. She testified that she understands now that self-inflicted harm should not be a way to deal with stress. *Id.* at 54. The individual reiterated that when she is reminded of her past, she redirects her thoughts by calling her mother or close friends for support. *Id.* She concluded her testimony by stating that she has "come a long way" in the healing process since she was assaulted. The individual testified that she makes sound and wiser decisions now and is "less trusting of people who don't deserve [her] trust." *Id.* at 56. She testified that she is currently in a new relationship. The individual also testified that she possesses good judgment and reliability. To corroborate her testimony, the individual presented credit reports, her annual performance reviews and positive letters from her supervisors. *See* Individual's Exhibit A.

B. Testimony of Former Supervisors and Current Manager

The individual presented the testimony of two of her former supervisors and her current manager. Supervisor #1 testified that he has known the individual for seven years. He was the individual's first supervisor while she was in the military and supervised her for seven months. *Id.* at 10. Supervisor #1 testified that the individual is a very reliable and dependable person who always came to work on time. *Id.* at 11. He further testified that he was impressed by the individual's desire to always do her best work. *Id.* Supervisor #1 stated that he considers the individual to be a mature and stable person and never got the impression that the individual was depressed or had problems dealing with personal issues. *Id.* at 14-18.

Supervisor #2 testified that he has known the individual for two and a half years and has supervised the individual for about a year. *Id.* at 22. He described the individual as a reliable person with solid judgment. Supervisor #2 also stated that the individual has good work performance and has not missed a significant amount of time at work. *Id.* He further stated that the individual's stress level appears to be normal and noted that the individual handles stressful situations well. Supervisor #2 explained that the individual's job requires a lot of concentration and attention to detail, both of which the individual handles well. *Id.* at 25-28.

The individual's current manager has known the individual for two years. He similarly testified that the individual is very reliable, has a positive attitude and possesses good judgment. *Id.* at

31. The individual's current manager also noted that the individual is a hard worker and a team player. *Id.* at 32. He further testified that the individual has discussed her assaults with him, but he has never observed any signs of depression or mood swings in the individual. *Id.* at 34.

C. The DOE Psychologist's Testimony and Report

As stated earlier, the DOE psychologist in her Psychological Report concluded that the individual's trauma of past sexual assaults, their continuing effect upon her and her past self-destructive response to the assaults may cause a significant defect in judgment and reliability. Ex. 5 at 13. She recommended that the individual seek counseling to address the assaults and to develop coping skills. The DOE psychologist also recommended that the individual undergo a medical evaluation to assess whether or not there are medical reasons for her migraines and dizziness. *Id.* After listening to the testimony of the individual and the other witnesses in the case, the DOE psychologist testified that the individual seems to be handling stress very well now. Tr. at 74. She was impressed at how composed and stable the individual appeared while speaking of the assaults during the hearing, noting that during her earlier evaluation of the individual, the individual was tearful when speaking of the assaults. According to the DOE psychologist, she opined that the individual's "talking about the trauma of the sexual assaults has reduced, . . . the strength or the impact of it in her feeling state, so it is no longer necessarily as sharp or startling or devastating." *Id.*

The DOE psychologist testified that the individual has developed very good coping skills to deal with stress. She testified that while coping with dreams of the past, the individual may cry for a while, which is a normal, good response, but she is able engage herself in another activity such as calling a relative or friend. *Id.* The DOE psychologist testified that the individual is now good at accessing a network of support for herself. She added that the individual is not drinking as she has done in the past to cope with her stress. The DOE psychologist was also impressed with the testimony of the individual's co-workers regarding her judgment and reliability. Finally, she concluded that the individual is doing very well now. She further concluded that although counseling may be beneficial in the future if the individual's memories become bothersome, she would not require that the individual seek counseling now. *Id.* at 75. When questioned about the likelihood of the individual engaging in behavior that negatively affects her judgment and reliability, the DOE psychologist testified that there is a ten to twenty percent possibility of recurrence. *Id.* at 79. The DOE psychologist added, however, that the individual is doing exactly what she would want her to do. *Id.* at 80.

D. Hearing Officer Evaluation of Evidence

In the administrative process, Hearing Officers accord deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. *See Personnel Security Hearing* (Case No. TSO-0215), <http://oha.doe.gov/cases/security/tso0215.pdf>. *Personnel Security Hearing* (Case No. TSO-0466), <http://oha.doe.gov/cases/security/tso0466.pdf>. In this case, I accorded substantial weight to the revised opinion of the DOE psychologist who testified at the hearing that the individual is handling stress well, has developed coping skills to address her stress and has established a good network of support and further, that the individual is not in need of counseling at this time. In

addition, I determined that the testimonial and documentary evidence weigh heavily in the individual's favor. First, the individual convincingly testified that she has learned to cope with the stressful memories of her past sexual assaults without resorting to self-mutilation. It is clear from her testimony that she now fully understands the inappropriateness of her past behavior. As she noted, the scars on her arms serve as a deterrent to that behavior in the future. The individual appears to be a very stable individual who has learned to be more confident and less trusting of individuals who may not have her best interests at heart. Second, I am convinced that the individual has a good support network in her mother and her close friends. I am further convinced that the individual's support network will help her to cope with any stressors that might otherwise serve as a trigger to a self-destructive response to her stress. Third, I was persuaded from the individual's testimony, and that of her witnesses, that the individual exercises good judgment and reliability at work and in her home-life routines. Furthermore, the individual provided corroborating evidence to demonstrate that she is a reliable, hardworking employee who can work under highly stressful conditions. In sum, I find that the individual has provided adequate evidence that she no longer has a mental condition that may cause a significant defect in judgment and reliability.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criterion H. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth convincing evidence to mitigate the security concerns associated with the criterion at issue. I therefore find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be granted. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: September 30, 2008